

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

TOM W. DAVIDSON
202.887.4011/fax: 202.955.7719
tdavidson@akingump.com

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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: MB Docket No. 05-317
KTRK-TV, Houston, Texas, Facility ID No. 35675
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

KTRK Television, Inc. ("KTRK Inc."), the licensee of KTRK-TV and KTRK-DT, Houston, Texas, Facility ID No. 35675, by its attorneys, hereby requests a six-month waiver ("Testing Waiver") of the April 30, 2006 digital signal testing implementation date ("April Deadline") to temporarily preclude satellite subscribers from conducting a digital signal strength test of KTRK-DT for purposes of obtaining a distant network signal. The Testing Waiver is sought pursuant to Section 339(a)(2)(D) of the Communications Act ("Section 339"), as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), and the November 17, 2005 public notice ("Waiver PN") released by the Federal Communications Commission ("Commission").¹ As further set forth herein, KTRK-DT's digital signal coverage presently is limited due to the necessity of using a side mounted antenna below its top-mounted analog antenna, and its plans to use its current analog antenna as its digital antenna post-transition. For these and other reasons set forth herein, KTRK Inc. submits that grant of a Testing Waiver is consistent with Section 339 and is in the public interest.

KTRK-DT Is Not Subject to the April Deadline. As an initial matter, KTRK Inc. believes that KTRK-DT is not subject to the April Deadline. The April Deadline applies to network stations in the top 100 television markets that received their current digital channel as their post-

¹ See 47 U.S.C. § 339(a)(2)(D) as amended by Section 204 of SHVERA; TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005 or February 15, 2007, DA 05-2979, *Public Notice* (rel. Nov. 17, 2005) ("Waiver PN").

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transition channel or were found by the FCC to have lost interference protection.² KTRK-DT has not received a tentative channel designation but has requested, and resolved a conflict regarding, its present analog channel.³ Further, KTRK-DT has not lost interference protection at this time. However, KTRK-DT has requested a waiver of the Commission's replication deadline of July 1, 2005, and this request ("Replication Waiver Request") remains pending.⁴ If the Commission rejects the KTRK-DT Replication Waiver Request, KTRK-DT may lose interference protection.⁵ Given this possibility, KTRK-DT is filing the instant Testing Waiver request out of an abundance of caution.

KTRK-DT Uses a Side-Mounted Antenna. To the extent that the Commission determines that KTRK-DT is subject to the April Deadline, KTRK Inc. requests a Testing Waiver pursuant to Section 339. Section 339 provides that subject stations may obtain a temporary waiver of satellite subscriber digital signal testing if "the station's digital signal coverage is limited due to the unremediable presence of one or more" statutory criteria. One criterion considered is whether "the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna."⁶ KTRK Inc. requests a Testing Waiver for KTRK-DT on the basis of this criterion.

KTRK-DT currently is unable to serve 52,383 people predicted to be served by KTRK-DT's initial DTV allotment because of the current side-mounted position of its antenna.⁷ The top tower mast positions on the KTRK Inc. tower are occupied by the KTRK-TV antenna. As a result, KTRK Inc. had to side-mount KTRK-DT's antenna on the tower's lower and wider base. The large size of the tower at this level causes signal blockage and reduces the number of viewers that KTRK-DT can reach.⁸ KTRK Inc. cannot remedy this signal blockage by moving

² See 47 U.S.C. § 339(a)(2)(D)(vii).

³ See BFRCCCT-20051031ADO.

⁴ See Letter to Ms. Marlene H. Dortch, Secretary, FCC, from Tom W. Davidson, Esq., MB Docket No. 03-15 (filed July 1, 2005) ("Replication Waiver Request").

⁵ It also is possible that the Commission will reject KTRK-DT's request to use its analog channel and, as a result, KTRK-DT may receive a tentative channel designation on its current DTV channel.

⁶ 339(a)(2)(D)(viii)(V)

⁷ See Replication Waiver Request, at 2.

⁸ The tower does not similarly impede the signal of KTRK-TV because the KTRK-TV antenna is attached to a narrower and higher portion of the tower, above the KTRK-DT side-mounted antenna.

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its antenna because, as indicated above, the higher position is occupied by the NTSC antenna.⁹ KTRK Inc. also cannot remedy this problem now because it will use its current NTSC antenna as its DTV antenna post-transition. Specifically, because KTRK Inc. will use its current NTSC channel as its post-transition DTV channel, it will use the current KTRK-TV antenna as its antenna for KTRK-DT. However, KTRK-DT must wait until KTRK-TV ceases operation before it can assume use of the KTRK-TV antenna. In sum, KTRK-DT's signal coverage is temporarily limited due to its side-mounted antenna and its plans to use its NTSC antenna for its post-transition operations, and KTRK Inc. requests a Testing Waiver on this basis.

Grant of a Testing Waiver Also is in the Public Interest. Grant of a Testing Waiver also is in the public interest because it will have only a short-term, temporary effect on satellite subscribers within KTRK-DT's non-replicated area. Specifically, KTRK-DT will be able to reach these subscribers at the end of the analog transition through the eventual use of the current KTRK-TV antenna. The antenna will remain top-mounted on the tower, and thus will not face the problems currently affecting the side-mounted KTRK-DT antenna. From this position, the KTRK-TV antenna has proven quite capable of serving the station's analog viewers and will continue to capably serve these viewers as the antenna for KTRK-DT. Thus, satellite subscribers will be able to receive KTRK-DT at the end of the digital transition. Because satellite subscribers soon will receive KTRK-DT, the Commission should delay testing that could permit subscribers to receive distant digital signals indefinitely, well-beyond the short-term period during which they could not receive KTRK-DT over-the-air.¹⁰

Conclusion. For all of the reasons set forth herein, KTRK Inc. respectfully requests that the Commission grant a Testing Waiver for KTRK-DT.

⁹ KTRK Inc. also examined possible ways to increase KTRK-DT's coverage, aside from a switch of antenna positions; however, these studies found no viable solution.

¹⁰ At a minimum, the Commission should ensure that the term of any permissible distant signal delivery is limited so that satellite subscribers no longer may receive distant network signals once they are capable of receiving local digital signals over-the-air.

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Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Nazifa Sawez, Esq.